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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-908

CORRIE H. TANKERSLEY, et al.,
Petitioners,

vs.

TRINITY PRESBYTERIAN CHURCH OF MONTGOMERY ALABAMA, A CORPORATION, AND JOHN M. WARD, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Alabama Supreme Court violate the First Amendment prohibitions enunciated by this Court in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), *cert. denied*, 396 U.S. 1041 (1970); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), and *Jones v. Wolf*, 99 S.Ct. 3020 (1979), in its application of the "neutral principles of law" in resolving a property dispute between majority and minority factions

of a local church which was a member of a denomination with a general connectional polity?

2. Is there present a substantial federal question for determination by this Court where a church property dispute was resolved by a State civil court under "neutral principles of law" upon a consideration of the deeds, the corporate charter, the state statutes, the church constitution, and the equitable principles of estoppel and laches?

STATEMENT OF THE CASE

Respondents are in general agreement with the Statement of the Case as set forth in the Petition for Certiorari. However, we believe that there are pertinent omissions and that certain points need clarification for a complete understanding of this litigation.

All of the property involved was acquired by the local congregation of Trinity Presbyterian Church of Montgomery, Alabama (hereinafter called Trinity), without any financial assistance from Presbyterian Church in the United States (hereinafter called PCUS). The title to such property is vested in the civil corporation of Trinity without any limitation or restriction and without any express or implied trust. The deeds are all made to Trinity without any mention of PCUS. The incorporation documents of Trinity show it as a corporation organized for the purpose of the "maintenance of a church for the worship and service of God" and do not mention PCUS or any other denominational affiliation. Since its formation, Trinity has bought, sold, mortgaged, and generally dealt with its property by a majority vote of its congregation and officers without any control, supervision, or interference by any higher court of PCUS.

In PCUS, the Session of the local church is the *only* body that can receive and dismiss members [Book of Church Order - BCO §15-6 (4), (5)] (App. A p. 3a), and the Session determines and maintains the roll of membership in the local church (BCO §15-8). (App. A p. 3a). In this case the Trinity Session furnished to the Trial Court its membership roll which included the six individual Petitioners. Although Petitioners infer at page 4 of their Petition that the six minority members were excluded from the Trinity Church properties, the evidence in this case is to the contrary. These six Petitioners have never been denied any of the privileges of membership in Trinity. Trinity changed its denominational affiliation in 1973 from PCUS to Presbyterian Church in America (hereinafter called PCA). The question in this case is which faction - the majority or the six-member minority - is entitled to control the use and possession of the church property.

On November 4, 1973, by a vote of 814 to 112, the local congregation of Trinity voted to sever its denominational affiliation with PCUS; and in December, 1973, Trinity affiliated with PCA. This congregational action was taken after due written notice to all its members and after a series of informal meetings where both sides of the issue were presented. The congregational meeting was conducted in proper order. Representatives of PCUS were present to insure the proper conduct thereof. The six individual Petitioners herein filed a complaint with East Alabama Presbytery (the next higher court of PCUS) in November, 1973; and that complaint is still pending without any final action thereon. Respondents have had no notice to appear and be heard. On November 8, 1973, an Administrative Commission of East Alabama Presbytery, which Commission acts as the Presbytery, voted unanimously to dismiss Trinity from PCUS and so notified Trinity that it was dismissed. On November 12, 1973, the Trinity Session, the

governing body of the local church, notified PCUS of its severance from PCUS. On January 22, 1974, East Alabama Presbytery took a separate and independent action ratifying the dismissal of Trinity and recording the same in its official minutes. No complaint or appeal was filed to this Presbytery action, and the same remains uncontested. The time for appeal lapsed in ten days thereafter (BCO §116-4) (App. A p. 4a), and the dismissal of Trinity remains the final and official action of East Alabama Presbytery. In January, 1974, East Alabama Presbytery removed Trinity from its roll and did not replace it until almost four years later, which was after this suit was filed on June 23, 1977. Until shortly before this suit was filed in 1977, for almost four years, Trinity was treated by PCUS as if it were not a part of PCUS. There were no communications, and no notice of any hearings or meetings. From November, 1973, to this date, Trinity has received no notice of and has no opportunity to participate in any of the hearings in PCUS relating to the dismissal; to the validity of the guidelines; to the actions of the Administrative Commission; and to any other matter affecting Trinity or its local church property. Then, after all those years, the six-member minority faction, armed with an ecclesiastical decision in which Trinity was not allowed to participate, demanded that the majority relinquish their right to ownership, control and possession of the local church property.

Such similar dismissal procedures were adopted and followed in three Presbyteries of PCUS in the State of Mississippi. Over 150 churches were dismissed, and no action was taken against a single church. In East Alabama Presbytery over thirty churches were involved in exactly the same dismissal situation as Trinity Church. Only Trinity was singled out for suit.

REASONS FOR DENYING THE WRIT

I.

The Petition of Corrie H. Tankersley, et al., for a Writ of Certiorari should be denied. The decision of the Supreme Court of Alabama does *not*, as charged by Petitioners, violate the First Amendment prohibitions as enunciated by this Court in *Hull, Serbian Eastern Orthodox*, and *Jones v. Wolf, supra.*

Essentially the same question presented in this case was before this Court in *Jones v. Wolf*. There this Court phrased the question in the following language:

> The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law', or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church. (99 S.Ct. at 3022).

In that case, this Court answered the question by holding that the First Amendment does *not* require States to adopt a rule of compulsory deference to religious authority in resolving church property disputes in generally connectional churches.

The facts in this case are substantially the same as those in *Jones v. Wolf*. The same denomination is involved - Presbyterian Church in the United States. The provisions of the Constitution of that denomination (The Book of Church Order-BCO) concerning the ownership and control of property fail to reveal any language of trust in favor of the denomination. In the case at bar, it was stipulated that neither the general church nor any lesser church court had any proprietary or contractual interest

in the subject property. In both the case at bar and in *Jones v. Wolf,* the titles to the properties in dispute were held by the local church. In both cases, the funds used to acquire the property were contributed entirely by the local congregation. Pursuant to resolutions adopted by the local congregation, both churches repeatedly borrowed money on their properties. Neither State statutes nor corporate charters showed any basis for a trust in favor of the general church. In both cases, a minority faction within the local church had been recognized by the general church as the "true congregation."

In *Jones v. Wolf,* Mr. Justice Blackmun, after reviewing the above mentioned factors, stated as follows:

> Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, a 'State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters . . . .' We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute. (99 S.Ct. at 3025).

In the case at bar, the Supreme Court of Alabama anticipated Mr. Justice Blackmun's above reaffirmation of the approaches declared by Mr. Justice Brennan in *Maryland and Virginia Eldership v. Church of God at Sharpsburg, Inc.,* 396 U.S. 367 (1970), by adopting the "neutral principles of law" approach to resolve this civil property dispute.

In reaching its decision, the Alabama Supreme Court looked at the corporate documents of the local church and the deeds conveying the property in question and found no

reference to PCUS. (Pet. App. A p. 6a). The Court further noted that the parties had stipulated that PCUS had no proprietary or contractual interest in the property and that, at the time of the actions of the Respondents, the PCUS Constitution had no express provision prohibiting the withdrawal of a church or imposing any penalty or forfeiture in the event thereof. (Pet. App. A p. 7a). After reviewing these factors, the Alabama Supreme Court placed itself firmly within the approach enunciated in *Hull, Maryland and Virginia Eldership,* and *Jones v. Wolf* by stating its position as follows:

> The U. S. Supreme Court recognized the right of civil courts to decide disputes concerning church property in *Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969) and in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.,* 396 U.S. 367 (1970). Both *Hull* and *Sharpsburg* clearly indicate that civil courts have authority to decide disputes concerning church property; however, civil courts cannot resolve controversies involving religious doctrine or practice in deciding such property disputes. In other words, the courts must decide the property disputes by looking at so-called 'neutral principles of law' and not resolve the underlying controversies over religious doctrine. *Hull,* 393 U.S. 440 at 449. (Pet. App. A p. 9a).

In its application of the "neutral principles of law", the Alabama Court considered two permissible legal questions: (1) who were the members of the corporation; and (2) where PCUS through its own church court dismissed a local church to another denomination and took no civil action to revoke that dismissal for two and one half years, is PCUS, and the loyal minority claiming under it, estopped

from claiming the right to exclusive possession and control of the local church property?

In reversing the Trial Court, the Alabama Supreme Court addressed the issue of corporate membership. In dealing with this issue that Court stated specifically what it felt was the major issue in the case at bar, as it noted:

> The basic question in the case was: who were the members of the corporation; in other words, who owned the corporation and thus owned the church property? This was a legal question because it involved issues of property rights and the constituency of a legal entity created by statute . . . . The trial court committed reversible error by allowing the General Assembly's decree to be binding in this litigation since the composition of the church's corporate structure was the principal issue to be determined. The trial court should have made its own independent determination of which group was entitled to dominion and control of the corporation following the standards set forth in *Presbyterian Church v. Mary E. B. Hull Memorial Presbyterian Church, supra,* and *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.* (Pet App. A p. 10a).

Since 1901, Alabama has recognized the dual identity of an incorporated church. *Hundley v. Collins,* 131 Ala. 234, 32 So. 575 (1901); *Williams v. Jones,* 258 Ala. 59, 61 So.2d 101 (1952). It is the State's legitimate interest, through its civil courts, to make determinations concerning the corporate entity which has for its genesis the State. The Alabama Supreme Court then rightly concluded that the Trial Court erred when it accepted the ecclesiastical decision of the General Assembly of PCUS on the issue of membership in the corporation.

After deciding that the Trial Court should be reversed, the Alabama Supreme Court then decided to render this case. In so doing, it considered the second question above noted and concluded that the Petitioners, by their own inaction, were estopped from asserting any rights to the property in question.

In applying this "neutral principle" in rendering the case at bar, the Alabama Supreme Court was confronted with the same issue which concerned this Court in *Jones v. Wolf* - a dispute between the loyal minority and the withdrawn majority. Whereas in *Jones v. Wolf* the severance resulted from a unilateral action, the action taken by Trinity was bilateral. A church tribunal of PCUS initiated the procedures for Trinity's severance from PCUS. It was East Alabama Presbytery, which was authorized under §16-7(8) of the Book of Church Order to dismiss local churches, that put in motion the action taken by Trinity. (App. A p. 4a). Following the rules prescribed by the Presbytery, on November 4, 1973, Trinity, at a duly called congregational meeting, voted by the overwhelming majority of 814 to 112 to separate from PCUS. On November 8, 1973, an Administrative Commission of East Alabama Presbytery unanimously voted to dismiss Trinity from PCUS and Trinity was immediately so notified of its dismissal. On November 12, 1973, the Session of Trinity voted to notify East Alabama Presbytery of the severance of the affiliation from PCUS by the local congregation, and pursuant thereto letters from the Clerk of the Session and the business manager of Trinity were duly forwarded to East Alabama Presbytery. On January 22, 1974, the East Alabama Presbytery took a separate and independent action by ratifying the dismissal and recording the same in its official minutes. No appeal was taken by any of the Petitioners or any

church judicatory of PCUS from that action by the Presbytery. After January 22, 1974, the East Alabama Presbytery removed Trinity Church from its official rolls; and until shortly before this suit was filed, Respondents had no communication, no contact, and no notice of any hearings or meetings from PCUS. Trinity Church was treated as if it were not a part of PCUS. Thus it was the Courts of PCUS that initiated and sanctioned the action taken by Trinity pursuant to their procedures and freed Trinity from its connection with PCUS.

The action by East Alabama Presbytery which created the procedure to sever was not an isolated act. Other Presbyteries of PCUS prior to the action of East Alabama Presbytery had taken precisely the same action and dismissed local churches. At the same time that Trinity was dismissed, over thirty churches within East Alabama Presbytery were also dismissed. PCUS took no civil action through its General Assembly or other church courts to renounce or revoke the other dismissals. Trinity was cognizant of this PCUS inaction and relied upon it.

The Petitioners are thus confronted with the inexorable fact that the Alabama Supreme Court did not impermissibly reject an ecclesiastical decision but, within the accepted guidelines and principles of this Court, it invoked the State law of property and voluntary associations in holding that the Petitioners were estopped from pursuing any legal remedies they might have had against the withdrawing majority. This legal principle is compatible with this Court's reaffirmation of its adherence to "the neutral principles of law" approach as declared in *Jones v. Wolf, supra.*

In *Jones v. Wolf,* this Court demonstrated the broad intent of the "neutral principles of law." The Court in examining the "true congregation" issue stated:

> If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, we think this would be consistent with both the neutral principles analysis and the First Amendment. Majority rule is generally employed in the governance of religious societies. (99 S.Ct. at 3027).

In summarizing the permissibility of the majoritarian presumption, this Court observed, "Furthermore, the majority faction generally can be identified without resolving any question of religious doctrine or polity." This observation can be applied with equal validity to the property law of estoppel.

The Alabama Court, in its resolution of the property question of estoppel, resolved no question of doctrine or polity. The fact that estoppel would defeat the action of a church court does not render its employment violative of the First Amendment proscriptions. Estoppel, like the majoritarian rule, is a "neutral principle" that a civil court may invoke without establishing a church.

II.

Petitioners urge this Court to grant the Writ based on their contention that the Alabama Supreme Court has ignored the holdings in *Serbian, supra.* This simply is not the case. The Alabama Court made no attempt whatsoever to resolve any questions of religious polity or doctrine. Their decision was strictly in accord with the rule that "there are neutral principles of law developed for use in all property disputes which can be applied without establishing churches to which property is awarded." *Hull,* 393 U.S. at 449 (1969).

In *Serbian*, the issues before the courts were "quint-essentially religious", i.e. who was the real bishop and was the Diocese properly reorganized into three divisions? In that case the Illinois Supreme Court was found to have made a detailed investigation into, and impermissibly rejected, the decisions of the highest church tribunal in ordering the reinstatement of the bishop. In reversing the Illinois Supreme Court, this Court found as follows:

> For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them. (426 U.S. at 709).

The Respondents accept this as a correct statement of the law, but contend that for several reasons it is not controlling in the case at bar.

First of all, when the dispute to be resolved is essentially ownership or right to possession of property, the civil courts appropriately adjudicate the controversy, even though it may arise out of a dispute over doctrine or other ecclesiastical question, provided the court can resolve the property dispute without attempting to resolve the underlying ecclesiastical controversy. (*Maryland and Virginia Eldership v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367; *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449). The Alabama Supreme Court correctly designated the issues involved in the case at bar and its approach to them as follows:

> In this case, the issues involved clearly dealt with property; there was no need to decide any ecclesiastical issues in order to decide the property issues. (Pet. App. A p. 10a).

Therefore, whereas in *Serbian* this Court found that the identity of the true bishop was essentially a religious question; the issues in the case at bar essentially deal with property.

In the case of *Presbytery of Riverside, et al. v. The Community Church of Palm Springs*, 89 Cal. App. 3d 910, 152 Cal. Rptr. 854, *cert. denied*, 48 U.S. Law Week 3357 (No. 79-558, Nov. 26, 1979), the California Court of Appeal upheld a lower court ruling in favor of the withdrawing local congregation and offered these insights into the "religious" and "ecclesiastical" nature of the controversy before it:

> The only dispute here concerns ownership and right to possession of property in the name and possession of the local church when that right is exercised. There is no question in this case as to which body is the true Presbyterian church in Palm Springs. Community Church has renounced its affiliation with the Presbyterian denomination and does not claim to be a Presbyterian church or the representative of UPCUSA in Palm Springs. Community Church freely acknowledges that Presbytery and the Administrative Commission control the life of the Presbyterian church in Palm Springs. *In truth, there is no existing religious or ecclesiastical controversy.* There was one, it is true, which gave rise to the present dispute over the property in the name and possession of Community Church, but in resolving the property dispute it is not required that the court involve itself in or attempt

to resolve the underlying religious controversy. *Community Church ended that controversy when it withdrew from UPCUSA and terminated its relationship with the Presbyterian denomination.* (152 Cal. Rptr. at 862-863). (Emphasis added).

The same situation exists in the case at bar. Since the final act of severance of Trinity Church from PCUS by Presbytery on January 22, 1974, the Respondents have no longer been involved in any ecclesiastical controversy with the Petitioners. If any ecclesiastical issues have been injected into this litigation, it has been done by the Petitioners. Although the Petitioners claim that the Alabama Supreme Court ran afoul of the rules prescribed by this Court in *Serbian,* it can readily be seen that this is not the case. The Alabama Supreme Court correctly held that there was no need to decide any ecclesiastical issue.

This is the primary advantage of the "neutral principles" approach—it enables the civil courts to avoid becoming entangled in questions of religious doctrine and polity. The Alabama Supreme Court did not seek to limit the power of the denomination to recognize any group it wished as a part of that denomination or to reject the rulings of its highest church tribunals and did not seek to interject a civil determination of "ecclesiastical" and/or "religious" issues. Because the issues involved were "property" and not "ecclesiastical", the Alabama Supreme Court assigned the decisions of the church judicatories their proper position. The Court indicated that even if the Petitioners had asserted their civil rights at an earlier time, and therefore not been estopped to bring this action, the civil courts in Alabama still would not be bound by the determinations of the judicatories of PCUS and thus precluded from determining property rights in any subsequent litigation. (Pet. App. A p. 13a). Such a finding by the Alabama Court is consonant with this Court's expression in *Jones v. Wolf,* "We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved." (99 S.Ct. at 3026). In so concluding, this Court has put its condemnation upon those disputants in church property disputes who seek to contrive an ecclesiastical issue where none is present. The Alabama Supreme Court clearly saw the true substance of the issues involved in the case at bar and correctly avoided any detailed investigation into the past doctrinal differences of the parties and correctly decided the case based on civil law concepts which were familiar to it.

III.

The Petitioners' third reason for granting the Writ is that PCUS, in adopting its Book of Church Order, relied upon the rule in *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1871). We submit that the record in this case clearly discloses that such statement by Petitioners is in error.

The Presbyterian denomination involved in *Watson v. Jones* was *not* PCUS. Petitioners do not say that it was a PCUS church, but they do say it was "a Presbyterian church" and go on to argue that the *Watson* rule has been relied upon by PCUS. Actually there are many Presbyterian bodies in the United States, and they have varied forms of church government. The PCUS, the body here involved, has never adopted or followed the *Watson* rule; on the contrary, it has specifically rejected it.

Respondents do not believe that Petitioners' argument as to the historical position of PCUS is relevant to the

legal issues in this case. However, because Petitioners delve at length into PCUS' history, Respondents feel obligated to answer.

The record in this case contains an undisputed chronological history of PCUS from its genesis in Augusta, Georgia, in 1861. This history reveals that PCUS was confronted with this question of church property ownership in 1875. This was prompted by overtures from the Northern Presbyterian Church (UPCUSA) to reunite with the Southern Presbyterian Church (PCUS). A barrier to reunification was the different positions of the two Presbyterian bodies regarding the local ownership of church property. The action of the General Assembly of PCUS of 1875 was definite. It rejected the principle of *Watson v. Jones* (referred to as the Walnut Street decision) as applying to PCUS and confirmed the early position of PCUS which recognized absolute local control of local church property. (App. B p. 6a).

This Court might conclude that this position of the 1875 PCUS General Assembly was subsequently renounced. Such is not the case. In the "Historical Preface" of the present PCUS Book of Church Order, which is in evidence in this case, it is stated:

> When the Presbyterian Church in the United States (The Presbyterian Church in the Confederate States of America) came into being in 1861, it adopted the polity and discipline which had been in use in the Old School Assembly prior to the rupture. (App. A p. 1a).

The reference to the polity and discipline of the "Old School Assembly" refers to a previous division within the United Presbyterian Church in the United States of America (UPCUSA-Northern Church) in 1836. The division

resulted in the "Old School and New School" churches in America. UPCUSA (The Northern Church) was identified as the "New School Assembly." The "Old School Assembly" (the position adopted by PCUS) asserted no claim to the property of a local congregation, but held that the local congregation owned and controlled its local property. Thus this concept of local ownership and control of church property emerged in the earliest years of PCUS and has never been rescinded by any amendment to the Book of Church Order.

There was no provision in the PCUS Book of Church Order relating to local church property from the inception of PCUS in 1861 to 1925. In 1925, there was added BCO §6-3, and in 1949 there were added BCO §6-1 and §6-2. (App. A pp. 1a-3a). These are still the only provisions in the PCUS Constitution which relate to the ownership and control of local church property. These provisions give the absolute control of local church property in an incorporated church to a majority of the members and the officers of the local corporation and congregation. The only exception to this rule of local ownership and control is in BCO §6-3 where "a church is dissolved by the presbytery or otherwise ceases to exist and no disposition has been made of its property." It has been stipulated by the parties in the case at bar that neither situation exists here. There is not now, nor has there ever been, in the PCUS Constitution any implied or express trust provisions relating to local church property.

From time to time, efforts have been made to change this PCUS position. For instance, in 1949 there was a proposal to amend the BCO to limit the power of a congregation or its trustees to sell, mortgage or in anywise alienate property. Such a provision had long been a part of the UPCUSA Constitution (Northern Church) but had never been a part of the PCUS Constitution (Southern Church).

This effort to change the PCUS Constitution failed; and the reason given was that it violated the liberties heretofore enjoyed at the congregational level of church courts. (App. C p. 10a). Again, in 1973 there was an attempt to change the language of BCO §6-3, quoted above, by adding after "otherwise cease to exist" the words "as a part of PCUS." The amendment failed. This attempted change was in reaction to the action of two local PCUS churches in *Hull* which severed their affiliation with PCUS and by the subsequent action of severance by many churches including Trinity. The historical position of PCUS regarding local control of church property set forth in its Constitution remains unchanged. The PCUS Constitution is not now, and never has been, in harmony with the *Watson* precepts with regard to property.

Petitioners rely on a 1971 "Position Statement of the General Assembly of the Presbyterian Church in the United States on Property." (Pet. App. D p. 40a). It should be pointed out that since 1949 there have been four such position papers, i.e. 1949, 1951, 1953, and 1971. (App. C, App. D, App. E). The undisputed evidence in the case at bar shows these position statements are only declaratory statements and are *not* binding on the church and are not a part of the Constitution. They are mere expressions of opinion by the Commissioners gathered at an annual meeting. It should be pointed out that although the PCUS General Assembly is the highest court in the church, it only acts in its judicial capacity to interpret and apply the laws of the church in judicial cases. None of these position papers are decisions in a judicial case. Therefore, they are not even official interpretations of the Constitution. The General Assembly has said that they are *in thesi* statements which are merely advisory. This advice often changes from time to time. Petitioners do not quote from the 1951 statement which states in part:

> *Where property is acquired by a particular church, by purchase or otherwise, for the use of such church, it will be a matter for the civil courts to determine who constitute such church or its legitimate successors.* (App. D p. 11a). (Emphasis added).

The further vulnerability of the 1971 statement, relied upon by Petitioners as a position binding the Alabama Supreme Court or this Court, is the language found in the concluding paragraph:

> This position is subject, however, to the *civil laws of the State* where the property is situated. (Pet. App. D p. 42a). (Emphasis added).

Hence, the action of the Alabama Supreme Court invoking the civil laws of the State of Alabama did not violate the 1971 position statement. Its action was consistent with the recognition by PCUS that the civil laws of the State are pre-eminent over the denomination's preferred position at any one time.

Thus from 1949 to 1971 four *in thesi* declarations were made by the General Assembly of PCUS. General Assemblies come and go, and with them their transitory positions. The historical position of PCUS, as set forth in the BCO, vesting control of local church property in the majority of the local congregation, is immutable.

Following their exposition of the 1971 position paper, the Petitioners question the reasoning of this Court in *Jones v. Wolf* which concluded that the "neutral principles" did not "inhibit" the free exercise of religion. They declare that this Court's conclusion that the general church, by minimal steps, could insure the retention of property in the loyal faction of the general church is "overly sanguine" because PCUS has 4,010 local congregations. They contend that this Court's recommendations present

PCUS with a monumental task and that the recommendations are not fair to PCUS because it would have to change its rules. The record shows that this Court has not been "overly sanguine", as charged by Petitioners. In 1975, with the concurrence of a majority of its 4,010 local congregations, PCUS amended its Book of Church Order by adding:

> §4-2 - The relationship to the Presbyterian Church U.S. of a particular church can be severed only by constitutional action on the part of the presbytery of which it is a member.

This action taken by the General Assembly was an apparent attempt to limit withdrawals by local churches, such as occurred in *Hull*, Trinity, and hundreds of other local churches.

There is no reason why PCUS could not now further amend its Constitution "to recite an express trust in favor of the denomination" over local church property or require the local churches to so "modify their deeds or corporate charters to include the right of reversion or trust in favor of the general church" as suggested by this Court in *Jones v. Wolf*. Such action would be too late to affect the case at bar, but it certainly could be done with ease in the future if the PCUS wished to take this position.

Finally Petitioners argue that confusion has developed following this Court's ruling in *Jones v. Wolf*. They argue that different approaches by the Supreme Courts of Georgia and Florida show "a lack of uniformity in applying First Amendment rights."

This Court in *Jones v. Wolf*, in following *Hull* and *Maryland and Virginia Eldership*, issued a definitive opinion holding that alternative approaches were available to the states in resolving church property disputes. Georgia

took one approach, and Florida took another. What Petitioners decry as "confusion" and "lack of uniformity" is nothing more than various state courts choosing one or another of these permissible approaches. There is no confusion and no need for any further "definitive opinion."

CONCLUSION

It is obvious that the Petitioners' real purpose is to convince this Court that it was wrong in *Jones v. Wolf*. The Alabama Supreme Court decision now requested to be reviewed by the Petitioners does not violate the First Amendment. *First.* It was based on established state neutral principles of law. Thus no federal question is present. *Second.* As the Alabama Court reached its decision free of any doctrinal considerations, it did not transgress any of this Court's prior rulings in *Hull, Maryland and Virginia Churches, Serbian Eastern Orthodox Diocese* or *Jones v. Wolf*.

The Alabama Supreme Court's decision is constitutionally sound.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

Excerpts From Book of Church Order - 14th Printing - 1972 - Which Was in Evidence in Case at Bar

HISTORICAL PREFACE

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When the Presbyterian Church in the United States (the Presbyterian Church in the Confederate States of America) came into being in 1861, it adopted the policy and discipline which had been in use in the Old School Assembly prior to the rupture.

INCORPORATION AND PROPERTY OF A PARTICULAR CHURCH

CHAPTER 6

Incorporation and Property of a Particular Church

§ 6-1. FOR AN UNINCORPORATED CHURCH

A particular church which is not incorporated, desiring to elect trustees, may select from among its membership trustees or officers of like nature who shall have the power and authority to buy, sell, or mortgage property for the church, to accept and execute deeds as such trustees, to hold and defend titles to the same, to manage any permanent special funds entrusted to them for the furtherance of the purposes of the church. In the fulfillment of their duties such trustees shall be subject always to the authority, and shall act solely under the instructions, of the congregation which they serve as trustees. The powers

and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons. Such trustees shall be elected in regularly constituted congregational meetings.

§ 6-2. FOR AN INCORPORATED CHURCH

If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation.

§ 6-3. If a church is dissolved by the Presbytery, or otherwise ceases to exist, and no disposition has been made of its property, those who hold the title to the property shall deliver, convey and transfer to the Presbytery of which the church was a member, or to the authorized agents of the Presbytery, all property of the church; and the receipt and acquittance of the Presbytery, or its proper representatives, shall be a full and complete discharge of all liabilities of such persons holding the property of the church. The Presbytery receiving such property shall apply the same or the proceeds thereof at its discretion.

SESSION CONTROLS MEMBERSHIP

§ 15-6. The Church Session is charged with maintaining the spiritual government of the church. For this purpose it has power:

(4) To receive members into the communion of the church upon profession of faith in Jesus Christ, upon presentation of satisfactory certificate of dismission, or, in the absence of such certificate, upon reaffirmation of faith in Jesus Christ.

(5) To grant certificates of dismission to other churches, which, when given to parents shall always include the names of their children, specifying whether they have been baptized.

SESSION KEEPS CHURCH ROLL

§ 15-8. Every Session shall also keep an accurate record of baptisms, of non-communing members, of those admitted to the Lord's Table, of those received from other churches, of those dismissed to other churches, of those placed upon the inactive roll, and of the deaths and marriages of church members.

PRESBYTERY HAS POWER TO DISMISS CHURCHES

§ 16-7. The Prebytery has power:

(8) To receive and dismiss churches.

TIME LIMIT FOR APPEALS

§ 116-4. Written notice of Appeal, with the reasons supporting it, shall be given the court before it adjourns, or shall within ten days thereafter be filed with the Moderator or Clerk of the court.

APPENDIX B

Excerpt From the Minutes of the General Assembly of the Presbyterian Church in the United States, January 11, 1875.

pp. 88-89

II. CHURCH PROPERTY

BALTIMORE, *Jan. 11th*, 1875.

REV. SAMUEL J. NICOLLS, D. D., *Chairman*:

DEAR SIR: We now proceed to notice the second general cause preventing fraternal relations, namely: *The course pursued in regard to Church property.*

Most of the trouble in this matter is in the States of Missouri, Kentucky, and Tennessee, with individual cases elsewhere. The amount of property in dispute, or liable to it, has been estimated at not less than two millions of dollars. Some cases have been settled by arbitration. Other cases have been adjudicated in the civil courts, and the property adjudged sometimes to one side and sometimes to the other, not upon principles of equity, but upon legal technicalities. From the information received we are enabled to state that our people have, from the first, earnestly endeavored to settle the difficulty by compromise and arbitration, but in most instances it has been refused, and they have been harrassed with costly litigation, whereby hav come increased heart-burnings and dissensions, and no small reproach upon the Christian name.

This state of things cannot be contemplated with satisfaction by any who regard the peace of the Church, and "whatsoever things are lovely and of good report."

And now, without entering into a discussion concerning the decision of the Supreme Court of the United States, in the case of the Walnut Street Church, Louisville, Ky., or how far the action of the General Assembly (North) of 1872, in approving the principles there laid down, was inconsistent with the action of both the Old and New School Assemblies in approving precisely the opposite principle laid down by the courts of Pennsylvania, in the controversy of 1837 and 1839 (see Church case in Baird's Digest), we here propose that this whole matter shall be submitted to arbitration on the principles presented in the paper adopted by the Old School Assembly of 1839, and of which, for convenient reference, as well as general information, a copy is here given, as follows (1839, p. 158):

Be it resolved, by the General Assembly of the Presbyterian Church in the United States of America:

1. That this body considers itself and the Church at large bound, as both have been not only willing, but desirous, to adjust all claims against the corporate property of the Church, whether legal or equitable, in the most prompt, fair, and liberal manner.

2. That this is especially the case touching any claims which may exist on the part of the four Synods of Utica, Geneva, Genesee, and the Western Reserve, declared in 1837 to be no part of the Presbyterian Church, or on the part of those who seceded from the Church in 1838, or on the part of any body constituted out of the whole or any part of these elements. And that, in regard to all and each of these bodies and persons, the Assembly will faithfully adhere to any pledge or promise, express or implied, which it can justly be construed ever to have made, and will fulfil every expectation which it ever knowingly allowed to be cherished.

3. The Trustees of the Assembly are hereby authorized and requested to do, on the part of this Assembly, should occasion offer, whatever is lawful, competent, and equitable in the premises, conformable to the principles, and in the manner heretofore laid down in the Minutes of this Assembly for 1837 and 1838, so far as relates to the corporate property of the Church, or any equities springing out of the same.

4. With reference to all Institutions, Corporations, Congregations, and other public persons or bodies in connection with us, but holding property for ecclesiastical purposes, or for religious and benevolent uses, which property is not subject to the control of the Assembly, although the said persons, Institutions, or Congregations may be, in all such cases where difficulties relating to property have arisen or shall arise, in consequence of the long and painful disorders and divisions in our Church, we advise all our members and friends to act on the general principles heretofore laid down, and with the spirit of candour, forbearance, and equity which has dictated this Act.

5. The Assembly reiterates the declaration, that its chief desire, in all this part of our Church troubles, is to do even and ready justice to and between all persons and interests over which it has any control, or in regard to which it has any duty to perform.—*Baird's Digest, p.* 800.

In accordance with the excellent Christian spirit of this paper, we propose that a plan shall be now arranged by which, so far as possible, all matters of church property that are in dispute, or that have not been adjudicated or otherwise settled satisfactorily to both parties, and all claims to property of any kind shall be settled by arbitration, upon principles of equity and fair dealing, as becometh Christians.

Should this proposal be such as you approve, we suggest that the details may be most satisfactorily arranged after an oral conference between the two committees.

By order of the Committee. Yours very truly,

WILLIAM BROWN.

NOTE: The principles referred to as adopted by the Old School Assembly in 1839 and reported in Baird's Digest, page 800, were stated as follows:

"Be it resolved by the General Assembly of the Presbyterian Church in the United States of America,

4. With reference to all institutions, corporations, congregations, and other public persons or bodies in connection with us, but holding property for ecclisiastical purposes, or for religious and benevolent uses, *which property is not subject to the control of the Assembly,* although the said person, institutions or congregations may be in all such cases where difficulties relating to property have arisen or shall arise in consequence of the long and painful disorders and divisions in our church, *we advise all our members and friends to act on the general principles heretofore laid down, and with the spirit of candour, forbearance, and equity which has dictated this Act.*"

(Emphasis added)

APPENDIX C

Excerpt From the Minutes of the General Assembly of the Presbyterian Church in the United States, June 1, 1949.

pp. 28

(4) The Presbytery of Bethel respectfully overtures the General Assembly to appoint an ad interim committee to make a thorough study of the whole question of the relationship of the property of the individual church with reference to the control of the General Assembly or other church courts and that this committee be instructed to report its findings to the 1950 Assembly.

(5) In order to clarify the proposed amendment to Paragraph 163, Book of Church Order, sent down by the General Assembly of May 1948 for approval and advice of presbyteries, the Presbytery of Orange hereby overtures the General Assembly:

That between the words "elected" and "in" in sentence three of the paragraph relating to incorporated churches the words "from among the members of the corporation" be inserted so that the amended sentence would read, "The Officers of the Corporation, whether they be given the title 'Trustee' or some other title, shall be elected from among the members of the Corporation in a regularly constituted congregational meeting."

(6) The Presbytery of Asheville respectfully overtures the General Assembly to postpone action on the proposed amendment of paragraph 163, Book of Church Order, 1945 Edition, until the implications on the title of Church property be cleared up by an ad interim committee.

(7) The Presbytery of Central Texas respectfully overtures the General Assembly to amend the Book of Church Order, Paragraphs 76 and 163, in such a fashion as to provide that no congregation nor the trustees thereof shall have power, without permission of its presbytery, to sell, mortgage, or in any wise alienate property to which it holds title and on which regular public worship is conducted.

pp. 57

Overture 7, from the Presbytery of Central Texas, requesting that the General Assembly amend the Book of Church Order, Paragraphs 76 and 163 in such fashion as to limit the power of a congregation or its trustees to sell, mortgage, or in any wise alienate property to which it holds title.

The committee voted to recommend that this overture be answered in the negative: (1) because it is a violation of the liberties heretofore enjoyed at the congregational level of church courts; and (2) furthermore we feel that Paragraph 164 of the Book of Church Order grants to presbytery the powers necessary to protect the interests of the church at large when they are being violated.

APPENDIX D

Excerpt From the Minutes of the General Assembly of the Presbyterian Church in the United States, June, 1951.

pp. 88

The committee spent an entire day in discussion of that which was committed to it and the adoption of the report which is submitted, as follows:

That as a result of our study and deliberation, we submit to the General Assembly, the following five statements as our answer to the Assembly.

1. The legal title to property of a particular church is in its trustees on the behalf of that congregation. Therefore, the property is actually controlled by that congregation. This is recognized by both Civil and Ecclesiastical courts. The right to hold and dispose of property is granted by the State.

2. A voluntary religious society which constitutes a part of a religious organization or denomination, having established tribunals authorized to decide questions of faith, discipline, rule, or ecclesiastical government, is bound by decisions of such tribunals in such questions.

3. In such cases where a right of property asserted in a civil court is dependent solely on a question of doctrinal discipline, ecclesiastical law, rule, or church government and that question has been decided by the highest tribunal within the organization, the civil courts will ordinarily accept that decision.

4. Where property is acquired by a particular church, by purchase or otherwise, for the use of such church, it

will be a matter for the civil courts to determine who constitute such church or its legitimate successors.

5. If trustees or members of a particular church undertake to withdraw and attempt to take their church property with them, it may subject all questions of ownership and control to a decision by the civil courts.

Respectfully submitted,

J. RUPERT MCGREGOR, *Chairman.*

APPENDIX E

Excerpt From the Minutes of the General Assembly of the Presbyterian Church in the United States, June, 1953

pp. 143

3. Report of the Ad Interim Committee on Church Property

(Note: This report was adopted as a declaratory statement. It was not approved as a proposed amendment to the Book of Church Order. See page 43.—Stated Clerk.)

It is the opinion of the Ad Interim Committee that the following paragraphs are merely declaratory of the existing applicable principles found in or necessarily implied from the provisions of the Constitution of the Presbyterian Church.

The Committee recommend that these paragraphs be adopted as a declaratory statement by the General Assembly. If the General Assembly feels that an additional explanatory section in the Book of Church Order is desirable, then it is recommended that the following paragraphs be adopted as the opening paragraph of paragraph number 163 of the Book of Church Order.

ITEM I

The beneficial ownership of the property of a particular church of the Presbyterian Church in the United States is in the congregation of such church and title may properly be held in any form, corporate or otherwise, consistent with the provisions of civil law in the jurisdiction in which such property is situated. The congregation,

with respect to such property, may properly exercise any privilege of ownership possessed by property owners in such jurisdiction. In every instance nothing in the manner of tenure of such property or the use thereof shall be in violation of the obligation of such congregation to the body of the Presbyterian Church in the United States as established by the Constitution of such Church.

ITEM II

Disposition of the property of a particular church rests in the will of the congregation of that church. The congregation is that body of persons recognized as members of that particular church by the respective courts of the Church.

JAMES A. MILLARD, JR., *Chairman*